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Administration of justice at the United Nations

Administration of justice at the United Nations

Report of the Secretary-General**

Summary

The General Assembly, by its resolution 62/228, approved the framework of a new system of administration of justice in the United Nations, to be introduced as of January 2009. The new system will include a stronger emphasis on informal resolution of employment-related disputes through the strengthening and decentralization of the Office of the Ombudsman, and, on the formal side, it will consist of a first instance United Nations Dispute Tribunal and a second instance United Nations Appeals Tribunal. In the same resolution, the General Assembly requested the Secretary-General to submit, for consideration by Member States, draft statutes of the two new tribunals and proposals for transitional arrangements for transferring cases from the current system of internal justice to the new one. The draft statutes and other information that the General Assembly had requested to be submitted to it at its second resumed sixty-second session are set out in the report of the Secretary-General dated 3 April 2008 (A/62/782) and his note dated 8 April 2008 (A/62/748 and Corr.1). The Advisory Committee on Administrative and Budgetary Questions has reviewed the report of the Secretary-General, but it has not yet been considered by the General Assembly.

* A/63/150 and Corr.1.

** The delay in the submission of the present report was due to the need for extensive internal consultations.

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The present report responds to additional requests for information contained in resolution 62/228 relating to the new system of administration of justice. It includes options for the delegation of authority for disciplinary matters, and a detailed description of the Secretary-General's plan to proceed with limited delegation of authority in a phased manner, beginning with six peacekeeping missions, and the prerequisites that need to be in place for such delegation to be feasible. It also provides information on other issues, including the idea of a staff-funded scheme for legal assistance for staff; how information and communications technology can be used to assist the system of administration of justice; mechanisms for the formal removal of judges; and the proposed conditions of service of judges in the new system.

The Secretary-General requests the approval of the General Assembly for the proposed course of action relating to the limited delegation of authority for disciplinary matters. The approval of the Assembly is also sought on the proposed revisions to the Staff Regulations related to the introduction of the new system of administration of justice and the conditions of service of the judges of the Dispute and Appeals Tribunals.

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I. Introduction

A. Background

1. At its sixty-second session, the General Assembly decided to introduce a new system of administration of justice in the United Nations to handle employment-related disputes that was intended to be professional, transparent, expedient and decentralized. It was based on the proposals of the Secretary-General contained in his note of 23 February 2007 (A/61/758) and his report of 23 August 2007 (A/62/294), which were derived from recommendations made by the Redesign Panel on the United Nations system of administration of justice (see A/61/205 and Corr.1) and negotiations with staff through the Staff-Management Coordination Committee. The new system, which is meant to be in place by 1 January 2009, covers the global Secretariat and the separately administered United Nations funds and programmes.

2. The Secretary-General presented a report to the General Assembly at the second part of its resumed sixty-second session (A/62/782), which included the proposed statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and the Secretary-General's proposals for transitional measures to ensure the smooth transfer of cases from the current to the new system. This report was reviewed by the Advisory Committee on Administrative and Budgetary Questions (see A/62/7/Add.39) but has not yet been considered by the General Assembly.

3. The present report provides a brief update on the activities of the Secretariat to prepare for the new system and responds to the General Assembly's requests for additional information.

B. Preparations for the new system of administration of justice

General

4. In the first half of 2008, the relevant departments of the Secretariat and the separately administered United Nations funds and programmes have worked together closely to prepare for the new system. Detailed job descriptions for the new positions approved by the General Assembly have been finalized, classified and prepared for posting in the Galaxy system. The positions for the Office of Administration of Justice have already been advertised, and the selection process is under way. In addition, progress has been made in the elaboration of a code of conduct to ensure the independence and impartiality of individuals providing legal assistance to staff.

5. However, the fact that the statutes of the Dispute and Appeals Tribunals have not yet been adopted has hampered progress in some areas, for example, in the drafting of revised Staff Rules and administrative instructions, the preparations of detailed training materials and the drafting of terms of reference for the Registries of the Tribunals.

Internal Justice Council

6. The Internal Justice Council was established in May 2008, after the four initial members had selected the fifth member, who would serve as Chair. The members of the Internal Justice Council are:

Kate **O'Regan** (South Africa), Chair

Geoffrey **Robertson** (United Kingdom of Great Britain and Northern Ireland), external jurist nominated by staff

Sinha **Basnayake** (Sri Lanka), external jurist nominated by management

Jenny **Clift** (Australia), staff member nominated by staff

Maria **Vicien-Milburn** (Argentina), staff member nominated by management

7. The first task of the Internal Justice Council has been to work with the Secretariat to solicit candidates for the judicial positions in the Dispute and Appeals Tribunals. As prescribed in resolution 62/228, the Council has liaised with the Office of Human Resources Management on issues related to the search for suitable candidates. A vacancy announcement for the positions of judge was widely circulated. Among other steps, it was published in major media, sent to Member States, posted on the United Nations website, and sent to all United Nations country teams and information centres for further local circulation.

8. The Internal Justice Council will present a report to the General Assembly with its views and recommendations on two or three candidates for each vacancy in the Dispute and Appeals Tribunals.

Addressing the backlog

9. The Joint Appeals Boards, the Joint Disciplinary Committees, the Panel of Counsel, the Administrative Law Unit in the Office of Human Resources Management and the Administrative Tribunal have been working hard to address the backlog of cases. The additional resources provided by the General Assembly in this regard have been essential. Still, progress has been tempered by the exceptionally large number of new cases that have been filed the first half of the year. For example, the number of disciplinary cases received at Headquarters in the first four months of 2008, many from peacekeeping missions, was greater than the combined total received in 2006 and 2007. Disciplinary cases are generally more time-consuming and labour intensive.

10. The Administrative Tribunal held an extra session in April and May 2008 and disposed of 15 cases. Still, with many new cases being filed, it is expected that there will be a backlog exceeding 130 cases at the end of 2008.

II. Delegation of authority for disciplinary matters

A. Background

11. The Redesign Panel recommended delegating authority to heads of missions and offices away from Headquarters to handle disciplinary cases and to impose the full range of disciplinary measures. The idea was to help address the protracted

delays prevalent in the current centralized system, ensuring that cases were dealt with expeditiously and efficiently.

12. The Secretary-General proposed limited delegation of authority for disciplinary matters (A/62/294, paras. 96-124). His proposal was based on the Redesign Panel's recommendations and also look into account the recommendations made by the Staff-Management Coordination Committee at its twenty-eighth session, held in Nicosia from 25 June to 4 July 2007.

13. In paragraph 49 of its resolution 62/228, the General Assembly decided to endorse, in principle, the delegation of authority for disciplinary measures to heads of offices away from Headquarters and heads of missions/Special Representatives of the Secretary-General and requested the Secretary-General to present a detailed proposal regarding possible options for delegation of authority for disciplinary measures, including full delegation, as well as an assessment of possible implications for due process rights of staff members.

14. The following paragraphs contain a detailed description of the possible options reviewed by the Secretariat to ensure a fair, transparent and efficient disciplinary process for all individuals who have access to the current system of administration of justice and who shall have access to the new system (resolution 62/228, para. 7). Special attention has been given to the need to ensure that the large numbers of individuals in peacekeeping operations will have full and equal access to the new system of administration of justice and that adequate infrastructures are in place before any delegation of authority is implemented.

B. Full or limited delegation of authority

1. Full delegation of authority

15. Under the current system, the disciplinary process is centralized within the Office of Human Resources Management of the Department of Management at Headquarters or in the corresponding departments or offices in the separately administered United Nations funds and programmes that have delegated authority for disciplinary matters. The Redesign Panel noted that unless a robust system of justice was established in the field, at both the formal and informal levels, with staff members having access to legal representation, reform would be of limited impact. The Redesign Panel recommended that full delegation of authority be granted to special representatives of the Secretary-General heading peacekeeping and political missions and to heads of offices away from Headquarters in misconduct and disciplinary cases.

16. The option of full delegation of disciplinary authority to heads of both mission and offices away from Headquarters may have the advantage of eliminating some of the current delays linked to the centralized referral of cases to Headquarters and to the limited capacity of the Office of Human Resources Management to handle expeditiously a very large number of cases. However, delegating the full range of disciplinary authority to heads of missions and offices away from Headquarters poses a risk that measures that have a significant impact on the careers and professional reputations of individual staff members might be applied inconsistently among different duty stations. Unless a robust system is in place in the field, not only would such inconsistency have a negative impact on the due process rights of

staff, but it is also likely that it would lead to an increased number of contested decisions taken at the field level which would require management evaluations.

17. In order to properly implement a full delegation of authority for disciplinary matters to peacekeeping and special political missions as well as offices away from Headquarters, all the formal and informal components of the new administration of justice system would need to be decentralized. This would ensure full, transparent and equal access by individuals in the field. While such a decentralization could be cost-effective in large peacekeeping missions, it is unlikely that this would be the case for smaller missions or offices away from Headquarters.

18. In addition, full delegation of authority would require time and a major organizational effort to set up the necessary structures and complete the intensive training that would be required for the large number of officials who would be involved. This not only would be more costly but could also delay the implementation of this critical element of the new system.

2. Limited delegation of authority

19. In view of the above considerations, the Secretary-General proposes to delegate authority only partially, with the authority limited to imposing minor sanctions — censures and/or fines of an appropriate level. In addition, the authority to make other decisions during disciplinary proceedings would also be delegated to heads of mission and offices away from Headquarters in cases where the prerequisite conditions are in place, as described below. Although the authority to impose more severe disciplinary measures under chapter X of the Staff Rules would remain with the Under-Secretary-General for Management, limited delegation of authority would still help address the weaknesses highlighted by the Redesign Panel, in particular reducing the time required for the disciplinary process in the field.

20. As noted in paragraph 112 of A/62/294, due to the highly decentralized nature of the separately administered United Nations funds and programmes and their structures in field offices, which may create difficulties in achieving consistency, the disciplinary process and the authority to impose disciplinary measures will remain centralized in the separately administered United Nations funds and programmes.

C. Prerequisites for limited delegation of authority for disciplinary matters

21. It should be noted at the outset that, while the delegation of authority for disciplinary matters to heads of mission and offices away from Headquarters is part of the overall reform of the administration of justice, in order for it to be effective, other critical components must be in place prior to its implementation. These include access to the Office of the Ombudsman at Headquarters or at the regional level, access to a fully operational Office of Staff Legal Assistance in the field and in offices away from Headquarters, as well as the outposting of legal officers from the Department of Management to assist and advise the head of mission or head of office away from Headquarters. Therefore, the limited delegation of authority would be implemented only at those duty stations where those conditions exist, including at the regional level, as relevant.

22. In addition, training for all staff involved at all the different stages of the disciplinary process, including staff of the Office of Staff Legal Assistance, will be crucial. A comprehensive training programme should be carefully tailored to meet all needs and ensure that decisions taken by heads of mission or offices away from Headquarters are in conformity with the relevant regulations and rules and that the due process rights of staff are upheld. In designing a training programme, and information campaigns, management will consult with staff representatives.

23. In terms of training with respect to the investigation process, OIOS is currently designing an investigation learning programme aimed at equipping programme managers with basic investigations training for handling category II cases. The full complement of investigation learning programme modules will be developed by the end of 2008 or early 2009. The curriculum under development is based on best practices across the system, prevailing jurisprudence and relevant administrative issuances. In the development of the modules, due consideration is being given to the obligations of staff in terms of accountability as well as the protection of due process rights of staff in the conduct of an investigation.

24. A further prerequisite for the delegation of authority is the completion of a comprehensive review of the recommendations for disciplinary action made by heads of mission to Headquarters under the current system (see A/62/294, para. 120). This exercise, which is currently ongoing and is expected to be completed prior to the introduction of the new system, will form the basis for developing guidelines for the imposition of fines of and/or censures. Clear and comprehensive guidelines for programme managers will be essential to ensure a consistent application throughout the system of censures and fines of an appropriate level.

25. In addition, a revised administrative instruction relating to the disciplinary process must be issued to include procedures on the new mechanisms, including the reporting of misconduct, investigations, due process rights of staff, evaluation of investigation reports and disciplinary proceedings. All the prerequisites, including all required human resources, administrative instructions, guidelines and training as well as the relevant manuals and standard operating procedures mentioned in the paragraphs above, must be in place prior to the introduction of any limited delegation of authority for disciplinary measures. Much work still needs to be done in respect of those matters and, as agreed by the Staff-Management Coordination Committee at its twenty-eighth session, consultations with staff will be undertaken through the Committee's contact group on administration of justice.

D. Disciplinary proceedings

26. The limited delegation of authority to impose minor sanctions would be within the framework for disciplinary proceedings, as described below.

27. Chapter X of the Staff Rules, and in the case of the Secretariat, the related administrative instruction of 2 August 1991 (ST/AI/371), set out the existing disciplinary procedures. However, the administrative instruction predates the creation of both OIOS and the Department of Safety and Security. The Redesign Panel stressed the need for a clear investigation framework as part of the new system. Changes to reflect the new system of administration of justice, including the revised disciplinary process, are being made to chapters X and XI of the Staff Rules,

which govern the disciplinary and appeals processes. A new administrative instruction replacing ST/AI/371 will also be issued to provide details on the implementation of the new disciplinary process. The final amendments to the Staff Rules and the issuance of the new administrative instruction will be subject to the approval by the General Assembly of the statutes of the Dispute and Appeals Tribunals.

28. The components of the disciplinary process are described below according to the three successive phases: (a) the pre-disciplinary phase; (b) the disciplinary phase (and the proposed limited delegation of authority); and (c) the recourse mechanism.

1. Pre-disciplinary phase

Receipt of allegations or complaints

29. As a first step, reports of possible misconduct would be made by individuals to OIOS or a head of department or office. There is an obligation on the part of all United Nations staff to report possible misconduct that might come to their attention, and staff have been informed of this obligation (see ST/IC/2005/19 and ST/SGB/2005/21, sect. 1.1). Once the matter has been brought to the attention of OIOS or a head of department or office, a determination is made as to whether there are sufficient grounds on which to launch an investigation. While peacekeeping operations currently do so as a matter of course through conduct and discipline units, paragraph 12 of resolution 59/287 envisages a mechanism whereby programme managers will have the duty to report to OIOS all allegations of misconduct that come to their attention. The new administrative instruction on the disciplinary process will describe the various sources and mechanisms for reporting allegations of wrongdoing, defining the responsible officials and/or offices and containing the criteria for assessing whether a full-fledged investigation is warranted.

Conduct of investigations

30. As recognized by the Redesign Panel in paragraph 162 of its report (A/61/205), there is a need for a clear framework of cooperation and coordination between OIOS and the United Nations internal justice system bearing in mind the operational independence of OIOS. The relevant departments have been requested, therefore, to collaborate in developing an integrated system of common processes and unified rules of procedure. OIOS is updating its Investigations Manual, as well as standard operating procedures that specifically address technical and procedural matters related to investigations.

31. Since a large number of investigations (specifically, simple investigations or those involving lower risk to the Organization) are not conducted by OIOS, there is also a need for increased investigative capacity within the Department of Safety and Security and for programme managers throughout the Secretariat. As part of the development of an integrated system of investigative processes, standard operating procedures will also be developed by the Office of Human Resources Management for investigations and fact-finding, which are conducted under the authority of programme managers, and specialized training will be provided for all those entrusted with carrying out such investigations.

32. It should be noted that the Boards of Inquiry currently constituted in peacekeeping missions do not have the mandate to conduct disciplinary investigations in respect of United Nations staff members. The Boards are used mostly to establish facts pertaining to damage to or loss of United Nations property, or injury to United Nations personnel or third parties. The normal caseload would not justify establishing a standing Board of Inquiry in each peacekeeping mission, as had been recommended by the Redesign Panel. Instead, the Secretary-General proposes that each peacekeeping mission designate a staff member to preside over the Boards of Inquiry on a standing, full-time basis, but that the other members be assigned only on an as-needed basis.

33. The conduct and discipline units established in peacekeeping missions at an operational level receive allegations, but do not have investigative responsibilities. Cooperative working arrangements are in place between OIOS and the conduct and discipline units to ensure the proper categorization of allegations and effective investigative processes, which are under continuous review in order to identify efficiencies and ways to accelerate investigations.

Administrative leave

34. There are instances when it would be advisable for a staff member not to continue performing his or her functions on United Nations premises for a limited period of time in order to allow for the completion of an investigation or the finalization of disciplinary proceedings. In connection with the introduction of this type of administrative leave, which will be included in the revised chapter X of the Staff Rules, it is envisaged that authority to decide on whether to place a staff member on administrative leave during an investigation for up to a maximum of 15 calendar days would be delegated to heads of offices away from Headquarters and heads of mission. Any extension of the 15-day period would be subject, however, to approval by the Assistant Secretary-General for Human Resources Management.

Evaluation of the investigation

35. Once the investigation is completed, the final stage of the pre-disciplinary phase would be an evaluation of the investigation report and accompanying evidence to determine whether to initiate disciplinary proceedings against the staff member. Where an investigation has been undertaken by a programme manager, the results would be reported to OIOS in accordance with paragraph 11 of resolution 59/287. The Redesign Panel proposed the establishment of standing panels on disciplinary matters in all peacekeeping operations and offices away from Headquarters, to act as advisory bodies to review and recommend disciplinary action. As indicated by the Secretary-General in his report dated 23 August 2007 (A/62/294, para. 117), standing panels would most likely give rise to the same problems as those experienced with the existing Joint Disciplinary Committees (for example, the unavailability of volunteers), and they would also run contrary to the recommendation of the Redesign Panel that the current peer review system be abolished. Instead, the preferred option would be to have legal officers outposted from the Department of Management to selected missions and offices away from Headquarters where the workload justifies it or, in locations where the caseload does not justify a full-time legal officer, the functions could be performed at the regional level.

36. With the advice of the legal officer outposted from the Department of Management, the head of mission or head of office away from Headquarters would review the investigation report to ensure that both it and the supporting evidence were complete and that the charges had been properly formulated.

37. Before advising the head of mission or office away from Headquarters as to whether disciplinary proceedings should be initiated, the legal officer must consult the legal counsel for the staff member to clarify any outstanding issues.

2. Disciplinary phase

38. Disciplinary proceedings begin once a decision has been taken by the head of mission or office away from Headquarters to charge a staff member with misconduct following the review of the investigation report. The staff member would be informed in writing of the charges and provided with a copy of the evidence upon which the charges are based and the investigation report. In addition, he or she would be informed of his or her due process rights, which include the right to counsel and the right to respond to the charges.

39. As previously stated, the delegation of authority for disciplinary matters would be limited to the imposition of minor sanctions, censures and/or fines of an appropriate level, and such delegation would be implemented only at duty stations where the necessary capacity is in place. The authority to impose more severe sanctions would therefore remain with the Under-Secretary-General for Management.

3. Recourse mechanism

40. Should a staff member decide to contest the imposition of a disciplinary measure by the head of mission or office away from Headquarters, such a decision would be subject to a management evaluation conducted by the Department of Management. It could further be challenged before the Dispute Tribunal and, where the relevant grounds apply, appealed before the Appeals Tribunal.

E. Proposed safeguards

41. The steps noted in paragraphs 36 to 39 above following receipt of the investigation report constitute safeguards to ensure that the due process rights of staff members are respected. The measures comprise a review by the head of mission or office away from Headquarters, with the advice of the legal officer outposted from the Department of Management, to ensure that the investigation is complete and sufficient to proceed, that the charges are properly formulated, that the related report and evidence have been sent to the staff member with a request for comments, and that subsequently the staff member's comments are thoroughly assessed.

42. Additional safeguards were agreed by the Staff-Management Coordination Committee at its twenty-eighth session, whereby after the start of the disciplinary proceedings and after the staff member has commented, the legal officer outposted from the Department of Management must consult with the legal counsel of the staff member before any recommendation for disciplinary action is made to the head of mission or office away from Headquarters. Further, should the staff member contest

the imposition of a disciplinary measure by the head of mission or office away from Headquarters, such a decision would be subject to a management evaluation conducted by the Department of Management.

43. A further safeguard is the provision of legal assistance to the staff member, which was formalized in the establishment, pursuant to resolution 62/228, of the Office of Staff Legal Assistance to succeed the Panel of Counsel. The resolution approved posts for legal officers in New York, Addis Ababa, Beirut, Geneva and Nairobi, but not for the offices at Vienna, Bangkok and Santiago or in field missions.

44. Finally, decisions on the imposition of a disciplinary measure may be challenged before the Dispute Tribunal and may be appealed before the Appeals Tribunal.

F. Implementation of limited delegation of authority

45. The limited delegation of authority for disciplinary measures to the heads of mission or offices away from Headquarters would be granted only to those offices or missions where all the prerequisites and safeguards set out above are fully in place and the necessary resources are available to carry out those additional responsibilities.

46. It is therefore proposed that the limited delegation of authority for disciplinary measures be implemented in a phased manner, beginning with a select number of peacekeeping missions. Such delegation would serve to improve the implementation of the new system of administration of justice, as it would enable a more effective handling of the high volume of cases from those peacekeeping missions and would have a positive impact on the overall effectiveness of the mission.

47. In the first phase, limited delegation of authority would be established in the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), the United Nations Mission in the Sudan (UNMIS), and would also cover the African Union-United Nations Hybrid Operation in Darfur (UNAMID), and the United Nations Mission in Liberia (UNMIL), the United Nations Operation in Côte d'Ivoire (UNOCI) and the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL). The positions required to handle the delegation would be accommodated within the commitment authority for the support account for peacekeeping operations for the period from 1 January to 30 June 2009, and subsequently included in the proposed 2009-2010 support account budget.

48. Anticipating that limited delegation of authority for disciplinary matters would proceed at the peacekeeping missions mentioned above, the training programmes described in paragraph 22 and information campaigns would need to be put in place for those duty stations as a matter of priority before the implementation of the new system, which is expected to take place in January 2009. Special consultations between management and the relevant staff representatives will be held as soon as practicable so as to secure timely and effective implementation of the new system.

49. The implementation of this first phase of the limited delegation of authority in MONUC, UNMIS, UNAMID, UNMIL, UNOCI and UNIPSIL would be examined in the context of the review of the system of administration of justice recommended

by the Staff-Management Coordination Committee at its twenty-eighth session, to be undertaken at the end of 2010.

III. Staff-funded scheme for legal assistance

50. In its resolution 62/228, the General Assembly requested the Secretary-General to report on progress in establishing a staff-funded scheme for legal assistance to staff, the idea being that such a scheme would allow staff members to secure external legal counsel to assist them in claims before the Dispute and Appeals Tribunals.

51. There are several challenges in establishing such a fund under conditions that would be financially viable, managerially solid and fair to all staff, regardless of duty station.

52. Perhaps the most significant reason why there has been no progress in establishing a staff-funded scheme is that the idea lacks support among the staff. At the recently concluded twenty-ninth session of the Staff-Management Coordination Committee, staff representatives expressed their concerns and doubts regarding the appropriateness and viability of such an approach. Staff stated that by joining the United Nations system, they were losing their rights to pursue labour-related disputes according to their national legislation. In many national jurisdictions, those rights also include access to legal representation. Therefore, staff reiterated their opinion that within the new system of internal justice, legal representation should be provided for and funded by the Organization.

53. The alternative of a general levy imposed on all staff to secure funding is not a realistic option. Even if one were to assume that stable funding could be achieved in some manner, there would need to be administrative structures in place for a fair and transparent process for deciding on the allocation of funds, and a mechanism for administering the programme that would ensure accountability and provide for regular audits. A recourse mechanism for staff members who may have claims relating to the administration of the programme or use of the funds would also be necessary.

54. As staff unions/associations are voluntary bodies, with only a few persons working on a full-time basis, having adequate human resources to administer the programme could be problematic. Staff unions/associations would need to agree on a single set of rules and procedures for allocating the monies equitably and rationally among the applicants. This would require a degree of cohesion among the unions/associations of the United Nations that does not currently exist.

55. Staff unions have expressed their will to enhance the ongoing support for staff volunteering professional legal counselling and to cooperate with the Secretary-General to develop incentives to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance, as requested in resolution 62/228.

IV. Information and communications technology

56. In its resolution 62/228, the General Assembly requested the Secretary-General to report on how information and communications technology (ICT) can improve the functioning of the system of administration of justice.

57. Among the hallmarks of the new system is that it be transparent and expeditious, and ICT can play a key role in achieving this. A detailed ICT plan will be elaborated once the new Office of Administration of Justice is operational and should take into account the need for systems that are compatible across the global Secretariat and the funds and programmes. However, outline of some main pillars of what should be implemented can already be provided.

58. In terms of the formal system, it is envisaged that the use of technology would be enhanced on two levels: access to information via the Internet; and electronic filing (e-filing) of submissions. This has the advantage of introducing the changes to parties, staff and judges along with the new system and would be in line with the increasing use of technology throughout the United Nations, and would represent worthwhile and cost-effective innovations.

A. Website

59. An Administration of Justice system website containing all relevant information about the Office and the justice system is essential. The site may be hosted on the Internet in a secure manner, since not all persons under the jurisdiction of the Tribunals will enjoy Intranet access. Moreover, web-hosting will permit the Dispute and Appeals Tribunals judges away from duty stations, interested persons and academics access to the most recent developments in administration of justice.

60. Links to related offices, such as the Office of the Ombudsman, the Office of Staff Legal Assistance and the Office of Human Resources Management, as well as relevant offices in the funds and programmes, should be provided. From the main portal, there should be links to the websites of the Dispute and Appeals Tribunals. The sites should include all relevant contact information, information on filing submissions (see below for e-filing proposals); frequently asked questions written in plain, easily accessible language; and, as applicable, the respective Statutes and Rules; and fully searchable jurisprudence.

61. In addition, it is proposed that each website contain a secure area, which would permit any party in an active case, as well as the relevant unit or registry, to log in and review the status of a case, all submissions filed and related correspondence.

B. E-filing

62. At the current Administrative Tribunal, parties are required to file one original and seven copies of their submission. The submissions are frequently bulky and incur production and transmission expense for applicants who do not have access to United Nations facilities. A significant proportion of submissions are rejected on the grounds of formatting, which incurs expense for the Organization in the return of

submissions and for the applicants in reformatting and resubmitting, as well as delaying the case. Upon the receipt at the Administrative Tribunal of a submission that meets the procedural requirements, one copy is transmitted to the other party. The remaining copies are initially kept at the tribunal secretariat for use by legal officers and members of the Tribunal. Once a judgement has been rendered, one set of the documents is sent for translation and another is sent to archives. The remaining documents are disposed of. Document storage is a perennial concern.

63. In the new system, e-filing could be introduced, whereby parties file electronic submissions, preferably via a secure portal on the website of the Management Evaluation Unit, the Dispute and Appeals Tribunals and relevant offices of the funds and programmes. A PDF format, or similar, would provide a valuable template and reduce errors and omissions. As submissions are invariably computer generated in the current system, the cost and inconvenience to the parties would be limited to the scanning of annexes to their submissions, some of which may already exist electronically. All current employees of the Organization should be permitted to use a United Nations scanner for that purpose; those who lack such access should be able to request the Office of Staff Legal Assistance for assistance. In the rare circumstance that scanning proves impossible for a party, the relevant administration of justice unit or registry would accept and scan documents.

64. E-filing would also permit the operation of an "e-Court" environment, permitting access by all parties in a tribunal hearing to documents in electronic format. This would permit hearings (or special deliberations of judges in remote locations) to be carried out on a paper-free model, as has been implemented with great success at the International Tribunal for the Former Yugoslavia. Submissions and evidence are efficiently organized, searched, shared, distributed and annotated, and may be accessed from anywhere in the world. The advantages of the proposed e-filing system include:

- transparency for all parties and personnel
- confidence in the receipt of submissions (which currently engenders significant correspondence)
- automatic e-mail notification of case activity
- immediate access to documents
- ability to store and search documents electronically
- ability to correct or update submissions, as necessary
- ease and speed of transmission between offices
- efficient transmission to the translation services
- convenience for judges and personnel working in remote locations
- significant reduction in costs of production and reproduction of submissions
- significant reduction in storage space required
- environmental benefits.

65. For practical purposes, it is proposed that the e-filing system be introduced only in English and French, as the overwhelming majority of cases are filed in those languages. Submissions in other official languages could be e-mailed to the

respective registry and the translated document posted online. Upon review of the system, once operational, the modifications required to adapt it for all official languages could be studied and a cost-benefit analysis produced.

66. Finally, with respect to communications technology, it is proposed that the judges of the Dispute and Appeals Tribunals be encouraged to utilize such methods to enhance their working practices wherever possible and to explore the use of such technology in conducting oral hearings and other inquiries.

67. While the above outlines some of the expected benefits, it is unlikely that they will be in place at the time the new system is to be introduced in January 2009. A detailed project plan will need to be developed, in consultation with all stakeholders, including choosing solutions for hosting the application and selecting the software, and identifying the resources required.

V. Other information requested by the General Assembly

A. Registries

68. The General Assembly, in its resolution 62/228, requested the Secretary-General to provide terms of reference for the Registries, taking into account the current working methods of the United Nations Administrative Tribunal.

69. The Secretariat will prepare the terms of reference of the Registries once the statutes of the Dispute and Appeals Tribunals have been approved by the General Assembly. Accordingly, it is proposed that the terms of reference of the Registries be submitted to the General Assembly at its resumed sixty-third session.

B. Cost-sharing

70. The General Assembly, in resolution 62/228, requested the Secretary-General to report to it at the main part of its sixty-third session on:

(a) The results of the negotiations between the United Nations and other participating entities on cost-sharing arrangements for the system of administration of justice (para. 67 (b));

(b) Viable options for programme support cost/trust funds to share the cost of the new internal justice system (para. 67 (d)).

71. The Secretariat initiated consultations with the participating, separately administered United Nations funds and programmes following the adoption of resolution 62/228, and those discussions are still ongoing. The funds and programmes have raised concerns regarding both the basis for the cost-sharing arrangement and certain operational aspects of the system itself. With regard to the basis for the cost-sharing, the funds and programmes have suggested that it be founded on actual cases disposed of as opposed to headcount. It is recalled that the General Assembly, in its resolution 62/228, approved the cost-sharing arrangement proposed by the Secretary-General in his report (A/62/294, paras. 161 and 162), which was based on the total number of staff members in the Secretariat and in the funds and programmes. Examples of operational aspects that require further negotiations include agreement on the details of cost-sharing of the integrated

Office of the Ombudsman, agreement on treatment and cost-sharing of the existing backlog of cases, agreement that all newly created information technology systems have to be compatible with the enterprise resource planning systems of the funds and programmes. Viable options for programme support cost/trust funds to share the cost of the new internal justice system are also being reviewed.

72. The Secretariat shall continue discussions with the funds and programmes with the aim of reaching agreeable solutions with all organizations and will report back to the General Assembly on the outcome of those discussions.

C. Mechanisms for the removal of judges

73. In paragraph 67 (c) of its resolution 62/228, the General Assembly requested the Secretary-General to provide information regarding mechanisms for the formal removal of judges, definition of the grounds of misconduct or incapacity and the means for the establishment of such grounds in a specific case.

74. At present, neither the Statute nor the Rules of the Administrative Tribunal set out procedures for removal of the members of the Tribunal. The statute provides, in article 3 (5), that no member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he or she is unsuited for further service. Based on available information, this article has not been implemented to date.

75. The Redesign Panel recommended in its report that judges of the Dispute and Appeals Tribunals should be removable only by the General Assembly, at the request of the Secretary-General, and only on grounds of proven misconduct or incapacity (A/61/205, para. 130). The Secretary-General indicated his support for that proposal (A/62/294, para. 70).

76. In its decision 62/519, the General Assembly took note of the conclusions of the Sixth Committee regarding the removal of judges. Specifically, the Sixth Committee stated that judges of the Dispute and Appeals Tribunals shall be removable only by the General Assembly and exclusively on grounds of misconduct or incapacity. This language is reflected in article 4 (10) of the statute of the Dispute Tribunal and in article 3 (10) of the statute of the Appeals Tribunal, which are currently under consideration by the Assembly.

77. While it was originally proposed by the Secretary-General that the removal of judges by the Assembly would be initiated at his request (A/62/294, para. 70), it was subsequently considered that such an approach might raise concerns about the perception of a conflict of interest, as the Tribunal judges are mandated to review challenges to administrative decisions made by the Secretary-General. It should be noted that in a number of administrative tribunals of international organizations, the members of the tribunals are involved in the removal process. As discussed above, the dismissal of a member of the United Nations Administrative Tribunal requires the unanimous opinion of the other Tribunal members that the individual is unsuited for further service. Likewise, the termination of a member of the Administrative Tribunal of the International Monetary Fund requires the opinion of the other members that such individual is unsuited for further service.[1] Similarly, a judge of

[1] Article VII (5) of the statute of the Administrative Tribunal of the International Monetary Fund.

the European Union Civil Service Tribunal may only be deprived of office if, in the unanimous opinion of the judges and advocates general of the Tribunal, he no longer fulfils the requisite conditions or meets the obligations arising from this office.[2]

78. In view of the practice of other administrative tribunals of international organizations, the Secretary-General proposes that where an allegation regarding the misconduct or incapacity of a judge arises, such allegation should be reported to the President of the Tribunal in question, that is either the Dispute Tribunal or the Appeals Tribunal. The President of the Tribunal would establish a panel consisting of specialists to investigate the allegations. The due process rights of the judge must be respected during the course of an investigation, for example, he or she must be given the opportunity to respond to the allegation and submit relevant evidence. The report of the panel would be reviewed by the entire Tribunal, with the exception of the judge under investigation, and if there is a unanimous opinion that the allegation of misconduct or incapacity is well founded, the President of the Tribunal would report the matter to the General Assembly and request the removal of the judge.

79. The types of misconduct warranting removal from the Dispute or Appeals Tribunal would include violations of the following rules: (a) the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, as set out in ST/SGB/2002/9; and (b) the code of conduct for the judges, which is to be prepared by the Internal Justice Council and considered by the General Assembly in accordance with paragraph 37 (c) of resolution 62/228. The types of incapacity warranting removal from the Dispute or Appeals Tribunal would include either a physical or mental condition that would prevent a judge from performing his or her judicial functions and that cannot be addressed by a reasonable accommodation of such condition.

VI. Revisions to the Staff Regulations

80. The introduction of the new system of administration of justice will necessitate changes to articles X and XI of the Staff Regulations, and the corresponding chapters X and XI of the Staff Rules. The Secretary-General seeks the approval of the General Assembly of the following revised regulations 10.1 and 11.1, to come into effect simultaneously with the implementation of the new system of administration of justice on 1 January 2009:

Regulation 10.1

The Secretary-General may impose disciplinary measures on staff members who engage in misconduct. Sexual exploitation and sexual abuse constitute serious misconduct.

Regulation 11.1

There shall be a two-tier formal system of administration of justice:

(a) The United Nations Dispute Tribunal shall, under conditions prescribed in its statute, hear and render judgement on an application from a

[2] Article 7 of the statute of the Court of Justice of the European Communities, which is applicable to the European Union Civil Service Tribunal pursuant to article 5 of the Tribunal's statute.

staff member alleging non-compliance with his or her terms of appointment or conditions of employment, including all pertinent regulations and rules;

(b) The United Nations Appeals Tribunal shall, under conditions prescribed in its statute and rules, exercise appellate jurisdiction over an appeal of a judgement rendered by the United Nations Dispute Tribunal submitted by either party.

81. Revisions are being prepared to chapters X and XI of the 100, 200 and 300 series of the Staff Rules in consultation with all stakeholders. Should the General Assembly approve the above amendments to the Staff Regulations, the revised rules would be promulgated provisionally, effective 1 January 2009. The revised rules would be reported to the General Assembly at the first resumed part of its sixty-third session.

VII. Compensation for judges of the Dispute Tribunal and Appeals Tribunal

82. In his report of 23 August 2007, the Secretary-General stated that the judges of the Dispute Tribunal would be considered United Nations officials and that the non-staff compensation proposed would comprise salary and allowances equivalent to United Nations staff members at the Director level, and honorariums for judges of the Appeals Tribunal equivalent to rates applicable to the International Labour Organization (ILO) Administrative Tribunal, to provide for the services of judges rendering decisions on Appeals Tribunal cases. In its resolution 62/228, the General Assembly, in endorsing the recommendations of the Advisory Committee on Administrative and Budgetary Questions (A/62/7/Add.7), approved non-post resources in the amount of $785,600 for non-staff compensation for judges corresponding to the above.

83. It is therefore the intention of the Secretary-General to compensate the judges to be appointed by the Assembly to serve on the Dispute Tribunal with salaries and allowances equivalent to the D-2 level (see annex I). The salaries and allowances of part-time judges appointed to the Dispute Tribunal would be paid on the basis of the principles contained in the administrative instruction on part-time employment (ST/AI/291/Rev.1), as appropriate. The judges will have the status of officials other than Secretariat officials in order to maintain their independence vis-à-vis the Secretariat. It is also the intention of the Secretary-General to pay an honorarium to the judges on the Appeals Tribunal for each decision rendered, using rates equivalent to those applied to the judges of the ILO Administrative Tribunal: head judges would receive $2,400 per judgement, and participating judges would receive $600 per judgement.

VIII. Conclusions

84. The Secretary-General considers the introduction of the new system of administration of justice as an integral part of the overall management reform of the United Nations. It will contribute to a better managed Organization by having a system of dealing with internal employment-related disputes that is more professional, transparent and decentralized. It will be fairer to staff, and the checks

and balances will contribute to stronger accountability with regard to decision-making.

85. It is also an important step in unifying the systems between the Secretariat and the separately administered United Nations funds and programmes. Just as the elaboration of the proposals for the new system was a unique joint endeavour with the separately administered United Nations funds and programmes, with staff and with Member States, this common collaboration has continued to characterize the preparations that are under way for the introduction of the new system.

86. The Secretariat is poised to proceed with the introduction of the new system, as approved by the General Assembly in its resolution 62/228, with regard to all staff who have access to the current system of administration of justice. The Secretary-General therefore wishes to stress the importance of having the statutes of the Dispute and Appeals Tribunals adopted, the judges appointed and amendments to the Staff Regulations approved, and to have a decision by Member States on his proposal for transitional measures (see A/62/782) as soon as possible. So many other necessary actions depend on those decisions, and delays would put the mandated implementation date of 1 January 2009 in peril. If necessary, any decisions made now could be reviewed in future, in the light of experience gained in the implementation of the new system. What is critical now is to put the basic elements of a functioning system in place by 1 January 2009.

IX. Recommendations and actions to be taken by the General Assembly

87. **It is important for the implementation of the new system of administration of justice that additional personnel (financed from within existing resources) be outposted to MONUC, UNMIL and UNMIS so as to allow support to the heads of those missions in exercising limited delegation of authority for disciplinary matters.**

88. **The General Assembly may wish to:**

(a) **Take note of the proposal to grant limited delegation of authority for disciplinary measures in a phased manner, beginning with a select number of peacekeeping missions, in accordance with the considerations and prerequisites described in the present report;**

(b) **Approve the proposed conditions of service of the judges of the Dispute and Appeals Tribunals.**

Annex

Compensation for judges of the United Nations Dispute Tribunal

Further to paragraph 83 of the present report, the Secretary-General proposes that the judges of the United Nations Dispute Tribunal be compensated equivalent to staff members at the D-2 level. Compensation for part-time judges would be based on the principles contained in the administrative instruction on part-time employment (ST/AI/291/Rev.1). This would include:

Full-time judges	*Part-time judges*
• Salary and allowances equivalent to those payable to United Nations staff members at the D-2 level, step IV. Allowances would include:	• 50 per cent salary and allowances equivalent to those payable to United Nations staff members at the D-2 level, step IV, except as provided below. Allowances would include:
• a representation allowance of US$ 600 per annum	• a representation allowance of US$ 300 per annum
• assignment grant	• assignment grant at 50 per cent
• dependency allowance	• dependency allowance at 50 per cent
• entitlement to shipment of personal effects	• entitlement to shipment of personal effects as if full-time judge
• education grant and travel	• education grant and travel at 50 per cent
• rental subsidy	• rental subsidy at 50 per cent
• Compensatory and insurance arrangements equivalent to those of staff members at the D-2 level, including provision for:	• Compensatory and insurance arrangements equivalent to those of part-time staff members at the D-2 level, including provision for:
• Compensation under the terms of appendix D to the Staff Rules for service-attributable death, injury or illness	• Compensation on a 50 per cent basis under the terms of appendix D to the Staff Rules for service-attributable death, injury or illness
• Compensation for death or disability while in office, or in receipt of disability benefits, comparable to the benefits payable in respect of participants in the United Nations Joint Staff Pension Fund under provisions for disability benefit and secondary dependent's benefit of the Regulations of the Fund	• Compensation for death or disability while in office, or in receipt of disability benefits, comparable to the benefits payable in respect of part-time participants in the United Nations Joint Staff Pension Fund under provisions for disability benefit and secondary dependent's benefit of the Regulations of the Fund

Full-time judges	*Part-time judges*
• Participation in health insurance arrangements of the United Nations on the same basis as staff members at the D-2 level.	• Participation in health insurance arrangements of the United Nations on the same basis as part-time staff members at the D-2 level
• Same standard of accommodation for all travel on official business (including appointment, home leave and repatriation) as staff members of the United Nations at the D-2 level	• Same standard of accommodation for all travel on official business (including appointment, home leave and repatriation) as staff members of the United Nations at the D-2 level
• Participation in the Pension Fund under supplementary article B of the Regulations of the Fund; the pensionable remuneration level and rates of contribution would be set at those levels applicable to staff members of the United Nations at the D-2 level	• Participation in the Pension Fund under supplementary articles A and B of the regulations of the fund; the pensionable remuneration level and rates of contribution would be set at those levels applicable to part-time staff members of the United Nations at the D-2 level
• Same annual leave as staff members of the United Nations holding fixed-term appointments of the same duration (2.5 days per month of service)	• Same annual leave as part-time staff members of the United Nations holding fixed-term appointments of the same duration (part-time judges will accrue annual leave at the rate of 1.25 full days per month of service)
• Same sick leave as staff members of the United Nations holding fixed-term appointments of the same duration	• Same sick leave as part-time staff members of the United Nations holding fixed-term appointments of the same duration (part-time judges will receive during sick leave one half of the salaries and allowances that would be payable to full-time judges)
• Same home leave as staff members of the United Nations holding fixed-term appointments of the same duration	• Same home leave as part-time staff members of the United Nations holding fixed-term appointments of the same duration (travel and related entitlements with the same periodicity as full-time judges and shall be paid one half of the expenses which would have been paid to full-time judges)